IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. ALONZO DAVIS, Petitioner.	)	2 CA-CR 2006-0194-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-50336

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Robert J. Hooker, Pima County Public Defender
By Nancy F. Jones
Tucson
Attorneys for Petitioner

P E L A N D E R, Chief Judge.

¶1 In 1996, petitioner Alonzo Davis was convicted after a jury trial of one count of attempted second-degree murder and two counts of aggravated assault, all dangerous nature offenses. He was sentenced to aggravated, concurrent, fifteen-year terms of imprisonment. This court affirmed Davis's convictions and sentences on appeal. *State v.*

Davis, No. 2 CA-CR 96-0262 (memorandum decision filed Feb. 17, 1998). The supreme court denied review. Our mandate issued—and Davis's convictions became final—on December 22, 1998.

¶2 Davis filed his first notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., in January 2005. In his post-conviction petition, Davis maintained the trial judge had committed fundamental error by relying on factors outside the jury's verdicts to impose aggravated sentences. According to Davis, the judge's actions are now known to be impermissible under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). Although Davis acknowledged that Division One of this court has held that *Blakely* "only applies to cases not yet final when the opinion was issued," *State v. Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d 629, 635 (App. 2005), he urged that *Febles* was wrongly decided and that *Blakely* should be applied retroactively. The trial court rejected the argument and summarily denied relief.

¶3 Davis makes the same argument in his petition for review. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here.

¶4 *Blakely* does not apply to cases that were final at the time *Blakely* was decided. *Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d at 635; *see also State v. Miranda-Cabrera*, 209 Ariz. 220, ¶ 26, 99 P.3d 35, 41 (App. 2004); *cf. State v. Sepulveda*, 201 Ariz. 158, ¶ 4, 32 P.3d 1085, 1086 (App. 2001). This court issued the mandate in Davis's appeal in

1998, long before *Blakely* was decided. Therefore, we grant the petition for review but deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge